REMARKS

This paper is being provided in response to the Office Action mailed May 18, 2005

(Final) for the above-referenced application. Claims 1-16 were pending and all had been

rejected. Claim 7 has now been canceled without prejudice to put the claims in condition for

Appeal if that should become necessary. No other Claim has been amended. Claims 1-6, 8-16

are now pending upon entry of this Amendment canceling Claim 7. Reconsideration and

allowance of the subject application, as amended, is respectfully requested, and in view of the

arguments made below

The Examiner has rejected Claim 7 under 35 USC 112. This claim has been canceled

thereby rendering this rejection moot.

The Examiner has rejected Claims 1-3 under 35 U.S.C. 103 (a) as being unpatentable for

obviousness over U.S. Patent No. 5,948,079 (Tsai) in view of U.S. Patent No. 6,529,518

(Webber). Applicant respectfully submits that this rejection should be removed because the

Examiner has failed to make a prima facia case of obviousness, which requires three basic

criteria that must be met. First, the prior art reference or combination of references must teach or

suggest all the claim limitations. Second, there must be some suggestion or motivation, either in

the reference itself or in the knowledge generally available to one of ordinary skill in the art, to

modify the reference or combination of references. Third, there must be a reasonable

expectation of success. The teaching or suggestion to make the modification and the reasonable

expectation of success must both be found in the prior art, not in Applicants' disclosure. Please

see MPEP 2143.

Here the first test is clearly not met. Applicant agrees with Examiner that Tsai "fails to teach the step of upon filling the buffer to a predetermined point, waking the internal thread to process the filled buffer, wherein the internal thread writes the contents of the buffer to the storage system, as claimed." The Examiner incorrectly alleges that the Webber reference teaches "a buffer in a network system (see col. 9, lines 15-19) where upon reach a predetermined point (e.g. 'one quarter full') it is emptied." Applicant respectfully submits that the Examiner may have misunderstood Webber's teachings, points out that what Webber states at the cited location is:

> "In order to maximize network utilization, the first requesting adapter may *de-assert its pause request* when its bypass buffer reaches a threshold level, such as one-quarter full, *rather than waiting until its bypass buffer is completely emptied.*" (Emphasis added, Webber Col. 9, lines 15-19).

Webber in fact teaches away from processing a filled buffer and writing the contents of the buffer, instead it merely teaches not waiting on its bypass buffer to empty before de-asserting a pause request. Applicant's invention on the other hand deals directly with the contents of a buffer by using an internal thread to write the contents of the buffer to a storage system. The combination of Tsai and Webber do not teach or suggest this claimed limitation in Applicant's Claim 1 and accordingly the first test of a prima facia case of obviousness is not met for Claim 1. Since Claims 2 and 3, both depend from Claim 1 and inherent all of its limitations a prima facia case of obviousness is not met for this claims either under the first test.

Nor are the second and third test met, because without the Claim limitations being taught or suggested by Tsai or Webber there is no motivation to combine the two, nor would there be any reasonable expectation of success at reaching Applicants' invention on making such a modification because a combination of Webber which teaches de-asserting a pause request with

Tsai which Examiner agrees does not teach limitations of Applicants' invention could not be

expected to yield the limitations discussed with reference to the first test above. Accordingly,

Applicants respectfully submit that the obviousness rejection of Claims 1-3 is unwarranted and

removal of this rejection is respectfully requested.

The Examiner has rejected Claims 4-9 for obviousness under 35 U.S.C. 103(a) over Tsai

in view of Webber and further in view of U.S. Patent 5,228,083 (Lozowick). Since Claim 7 has

been canceled, the rejection is treated as being for 4-6, and 8-9, all of which depend on

independent Claim 1. Applicant respectfully submits that this rejection should be removed

because the Examiner has failed to make a prima facia case of obviousness for the reasons made

out above with regard to Claim 1. Since there are compelling reasons for removing the rejection

of Claim 1, as described above, the rejection of all of its dependent claims, including Claims 4-6

and 8-9 should be removed. Accordingly, Applicant hereby respectfully requests removal of the

rejection of Claims 4-6 and 8-9.

The Examiner has rejected Claims 11-16 for obviousness over Tsai in view of Lozowick.

Applicants respectfully submits that this rejection should be removed because the Examiner has

failed to make a prima facia case of obviousness under the three tests from the MPEP cited

above. The Examiner has mischaracterized Applicants' claimed invention in Claims 11-16 in

the following assertion made by the Examiner at page 6 of the Office Action:

> "Therefore, one of ordinary skill in the art would have been motivated to modify the Tsai
> et al. reference in order to implement an optimized data processing method for the event
> of network disconnection, as taught by Lozowick et al.).

This is a mischaracterization because what Applicant claims in Claim 11 does not specify an

"optimized data processing method," rendering such references as the Examiner has made to

Tsai's communication optimization for different speeds in data transmission cited by the

Examiner as irrelevant and not applicable to Applicants' invention.

Applicants' invention at Claim 11 is directed to a computer system having a plurality of

applications (software) in communication with a storage system. In the invention each

application software has a process capable of sending and receiving information over a network

to and from the plurality of other software applications, and what is provided is a method for

providing continuous availability of the network information   When it is recognized that the

network between the applications is unavailable, the network information is written to one of the

applications to a storage volume on a storage system. Tsai's method for receiving transmission

packets and placing into a queue determined by the type of transmission packet has nothing to do

with recognizing that a network is unavailable and writing network information into a storage

system storage volume then copying such information to another storage volume. In this way the

storage system and its storage volumes are used to make network information continuously

available. Lozowick's teaching of use of a buffer for storing packets does not in combination

with Tsai teach or suggest the method of recognizing that a network is unavailable and in

response taking actions involving application software and data storage volumes, wherein the

redundancy of data storage volumes is used for continuous availability of network information.

Thus the first test of a prima facia case of obviousness if not met. Accordingly, Applicants

respectfully submitted the obviousness rejection is unwarranted and removal of this rejection and

allowance of Applicants' Claim 11 and all of its dependent claims 12-16 is hereby respectfully

requested.

In view of the foregoing, Applicants respectfully submit that the application is in

condition for allowance and respectfully request favorable reconsideration and withdrawal of all
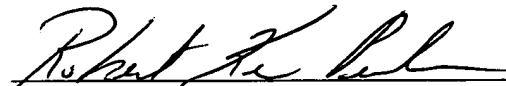
outstanding objections and rejections.

In the event the Examiner deems personal contact desirable in the disposition of this case,

the Examiner is invited to call the undersigned attorney at (508) 293-6985.

Please charge all fees occasioned by this submission to Deposit Account No. 05-0889.

                                          Respectfully submitted,

Dated: _July 8, 2005_   _____
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